

RULES AND REGULATIONS

BOARD OF LICENSE COMMISSIONERS

OF

MONTGOMERY COUNTY, MARYLAND

Adopted by the Board of License Commissioners

July 20, 2006

Effective: January 1, 2007

As amended:

**March 15, 2007, September 6, 2007, March 20, 2008, November 6, 2008,
January 8, 2009, October 1, 2009, and December 16, 2010, May 2, 2013**

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As of 3/2012

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All references to Article 2B are to Article 2B of the Annotated Code of Maryland

CHAPTER 1

GENERAL PROVISIONS

1.0 Authority

Article 2B Section 16-301

Pursuant to the authority granted by Article 2B of the Annotated Code of Maryland, the Board of License Commissioners for Montgomery County, Maryland, hereby adopts the following Rules and Regulations to enable the Board to effectively discharge the duties imposed upon the Board by Article 2B. These rules and regulations are subordinate to Article 2B of the Annotated Code of Maryland.

1.1 Organization

(a) The Board of License Commissioners (“the Board”) consists of five members appointed by the County Executive subject to confirmation by the County Council. The Board annually will elect one of its members as chairperson.

Article 2B Section 15-104(c)(1), (4)

(b) Three members of the Board constitute a quorum for transacting business. At any voting session of the Board, at least three members who are present must concur in the approval, denial, revocation, suspension, or reclassification of an alcoholic beverage license.

Article 2B Section 15-104(c)(5)

(c) A member of the Board may not have any interest in any license granted by the Board for the sale of beer, wine, and/or liquor. A member of the Board may not have any interest either directly or indirectly in premises where alcoholic beverages are manufactured or sold, or in any business devoted to the

manufacture or sale of alcoholic beverages. Stock in publicly traded corporations is not considered an interest for the purposes of this section, provided that ownership of such stock does not entitle the holder to any substantial degree of control or management of the corporation. **Article 2B Section 15-112(q)**

(d) No member of the Board or county employee may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from a licensee licensed under Article 2B, from any person engaged in the manufacture or sale of alcoholic beverages, or from an agent or employee of that person.

Article 2B Section 15-112(q)(4)

1.2 Powers

(a) The Board may issue alcoholic beverage licenses authorized under Article 2B within Montgomery County. **Article 2B Section 15-112(a)**

(b) The Board may suspend or revoke a license for any violation of Article 2B and/or these Rules and Regulations, or for any cause which, in the judgment of the Board, is necessary to promote the peace or safety of the community in which the place of business is situated. In lieu of suspending or revoking a license for a cause for which the Board is permitted but not required to suspend or revoke a license, the Board may impose a fine for the violation, if the Board determines that the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension period and that payment of the fine will achieve the desired disciplinary purposes. The fine assessed by the Board may not exceed \$20,000 for each case. **Article 2B, Section 10-401(a)(2), Section 16-507(q)**

- (c) The Board may promulgate Rules and Regulations.

Article 2B, Section 16-301

(d) The Board may set conditions and/or restrictions on the granting of a new, transfer, and/or renewal license when it finds this to be in the best interest of public accommodation and required to protect the peace and safety of the community.

Article 2B, Section 10-501

(e) No license will be issued by the Board unless it is consistent with the restrictions contained in **Article 2B, Section 8-216** of the Annotated Code of Maryland.

1.3 Licenses Are Not Property

Article 2B, Section 10-501

Licenses issued by the Board under the provisions of Article 2B are not property, and do not confer property rights. All licenses are subject to Article 2B, and to these Rules and Regulations, and may be restricted, suspended or revoked.

1.4 County Attorney

Article 2B Section 15-112(q)(2)

(a) The County Attorney for Montgomery County or the County Attorney's designee will serve as the legal advisor to the Board. The legal advisor will attend all meetings and hearings of the Board and provide legal advice to the chairman and to all Board members as requested.

(b) In an appropriate case, the County Attorney or the County Attorney's designee may prosecute a case before the Board. However, at no time will the Board's legal advisor represent the County before the Board. In those cases where the County Attorney's designee prosecutes the case before the Board, there will be

no contact nor discussion between the County Attorney's designee and the Board's legal advisor concerning the case at issue other than those contacts or discussions necessary to the orderly conduct of the case.

1.5 Legal Representation

Any party, applicant, witness, or individual who files a protest or complaint, may be represented by an attorney. Where a notice is to be given under these Rules and Regulations to or by any party, applicant, witness, or individual who files a protest or complaint, the notice shall also be given by or to the person's attorney, so long as the attorney has entered his or her appearance in the matter to be considered by the Board.

1.6 Time Periods

In computing any period of time set forth in these Rules and Regulations, the method of computation provided for in Rule 1-203 of the Maryland Rules of Procedure, will govern, unless otherwise stated.

1.7 Definitions

(a) Alcohol Awareness Program means a program that: is approved and certified by the State Comptroller; has been issued an alcohol awareness program permit by the State Comptroller; includes instruction on how alcohol affects a person's body and behavior; provides education on the dangers of drinking and driving; defines effective methods for serving customers to minimize the chance of intoxication, includes instruction on ceasing service before customers become intoxicated; and instruction on determining if a customer is under 21 years of age.

Article 2B Section 13-101(a)

(b) Alcoholic Beverages means a liquid, or compound, by whatever name called, that contains one-half of one percent or more of alcohol by volume, and is fit for beverage purposes.

Article 2B, Section 1-102(a)(2)

(c) Attorney means any attorney at law admitted to the Bar of the Court of Appeals of Maryland.

(d) Beer means any brewed alcoholic beverage and includes beer, ale, porter and stout.

Article 2B, Section 1-102(a)(3)

(e) Board means the Board of License Commissioners of Montgomery County.

(f) Country Club means any country club that has 100 or more bona fide members of whatever class; whose members pay an annual total amount of dues which averages at least \$50 for each member; and which maintains at the time of the application for the license a regular or championship golf course of nine holes or more and as further described in **Article 2B Section 6-301(q)(2)**.

(g) Club means an association, corporation, or other entity, organized and operated exclusively for educational, social, fraternal, patriotic, political, or athletic purposes, and not for profit. **Article 2B Section 1-102(a)(4)(I)**. This definition does not apply to those clubs applying for a beer, wine, and liquor license under Article 2B, Section 6-301.

(h) Comptroller means the Comptroller of the Treasury of the State of Maryland.

Article 2B, Section 1-102(a)(5)

(i) County means Montgomery County, Maryland.

(j) Happy Hour means any time of the day specifically set aside by a licensee to offer patrons reduced prices on alcoholic beverages or a second alcoholic beverage free or at a reduced price after the patron's purchase of a regularly priced alcoholic beverage.

(k) Hotel means an establishment for the accommodation of the public, equipped with not less than ten (10) bedrooms and a dining room with facilities for preparing and serving regular meals, in which the gross receipts from the sale of food equals or exceeds the gross receipts from the sale of alcoholic beverages.

Article 2B, Section 1-102(a)(10)

(l) Identification. For purposes of purchasing alcoholic beverages, the following five forms of signed and valid identification are acceptable: a State driver's license with a picture, a military identification, a passport, an immigration card, and an identification card issued by a State Motor Vehicle Administration.

(m) Intoxicated means to be affected by the consumption of alcohol to a sufficient degree that a person's mental and physical functioning are substantially impaired, and the impairment is evident from noticeable signs such as, but not limited to, uncoordinated physical action or physical and or mental dysfunction that should have been obvious to a reasonable person.

(n) Keg means a container of beer with a capacity of at least 4 gallons, which is designed to dispense beer directly from the container.

(o) Licensed Premises means those premises that are specifically identified in the license issued by the Board, and may also include an approved outdoor cafe area.

(p) License Holder or Licensee means the holder of any license or permit issued under the provisions of Article 2B or any other law of the State of Maryland. The license holder may be either the entity on behalf of whom the alcoholic beverage license has been issued and/or the individuals whose names appear on the alcoholic beverage license.

Article 2B, Section 1-102(a)(15)

(q) Light Wine means any naturally fermented or fortified wine not in excess of 22 percent of alcohol by volume.

Article 2B, Section 4-101(q)

(r) Mixed Drink means a drink that includes as an ingredient one or more alcoholic beverages combined together or with non-alcoholic beverages and/or food stuffs.

(s) Pecuniary Interest means a legal or equitable interest in the licensed business entitling the owner thereof to receive a percentage of the profits derived from the sale of alcoholic beverages of the business. It does not include payments made to any employee, manager, mortgagor, landlord, creditor, or other individual who does not otherwise own an interest in the licensed business. The ownership of stock in a publicly traded corporation is not considered a pecuniary interest for the purpose of these Rules and Regulations provided that the owner of such stock does not have any substantial degree of control or management of the corporation.

Article 2B, Section 10-103(10)b

(t) Person means a natural person, an association, a partnership, a corporation, a limited liability company, or any other legal entity.

(u) Renewal means the reissuance of an existing license for the exact premises, licensee(s), and type of license as was previously issued.

(v) Restaurant means any lunchroom, cafe, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen with complete facilities and utensils for preparing and serving hot and/or cold meals to the public, and further equipped with a public dining room with tables and at least thirty (30) seats, utensils, and glassware to serve meals prepared in the kitchen. A restaurant must maintain a menu advertising the serving of a variety of hot and/or cold meals, and there must be sufficient food on the premises at all times to fill orders from the menu. The requirement that a restaurant must have at least 40 seats does not apply to licenses in existence before September 19, 1989.

(This section revised October 1, 2009.) **Article 2B, Section 1-102(a)(22)(i)**

(w) Retail Dealer means a person who deals in or sells any alcoholic beverage to any person other than a license holder.

(x) State means the State of Maryland.

(y) Wine means any fermented beverage, including light wines, and wines the alcoholic content of which has been fortified by the addition of alcohol, spirits, or other ingredients.

(z) Youth Center means any facility sponsored or conducted by a governmental agency for the use of minors.

1.8 Severability

If any rule or regulation of these Rules and Regulations is held to be unconstitutional, invalid, or inapplicable to any person or circumstance by the final decision of a court of competent jurisdiction, all other rules or regulations of these Rules and Regulations and their application to all other persons and circumstances shall be separable and shall not be affected by such decision.

CHAPTER 2

LICENSES

2.0 Beer Licenses

(a) Class A (off-sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and sell beer at retail for consumption off the premises only, subject to the provisions and restrictions of **Article 2B, Section 3-101**. The annual fee for this license is \$200.00.

(b) Class B (on-sale): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and sell beer at retail at any hotel or restaurant for consumption on the premises or elsewhere subject to the provisions and restrictions of **Article 2B, Section 3-201**. The annual fee for this license is \$250.00.

(c) Class C (on-sale): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and sell beer at retail to bona-fide members and their guests at any club, for consumption on the premises only, subject to the provisions and restrictions of **Article 2B, Section 3-301**. The annual fee for this license is \$50.00.

(d) Class D (on-sale): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer at retail for consumption on the premises or elsewhere, subject to

the provisions and restrictions of **Article 2B, Section 3-401**. The annual fee for this license is \$250.00.

(e) Class H (on-sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer at retail at any hotel, restaurant, or bowling alley for consumption on the premises, subject to the provisions of **Article 2B, Section 3-202**. The annual fee for this license is \$400.00.

2.1 Light Wine Licenses

Class A: A license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell light wines on the premises, subject to the provisions and restrictions of **Article 2B, Section 4-201**. The annual fee for this license is \$100.00.

2.2 Beer and Light Wine Licenses

(a) Class A - (off sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer and light wines at retail for consumption off the premises only, subject to the provisions and restrictions of **Article 2B, Section 5-101**. The annual fee for the license is \$250.00.

(b) Class B (on sale): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer and light wines at retail at any hotel or restaurant for consumption on

the premises or elsewhere, subject to the provisions and restrictions of **Article 2B, Section 5-201**. The annual fee for this license is \$400.00.

(c) Class C (on sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer and light wines at retail to bona-fide members and their guests at any club for consumption on the premises only, subject to the provisions and restrictions of **Article 2B, Section 5-301**. The annual fee for this license is \$120.00.

(d) Class D (on/off sale): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer and light wines at retail for consumption on the premises or elsewhere, subject to the provisions and restrictions of **Article 2B, Section 5-401**. The annual fee for this license is \$400.00.

(e) Class H (on sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer and light wines at retail at any hotel or restaurant for consumption on the premises, subject to the provisions and restrictions of **Article 2B, Section 5-202**. The annual fee for this license is \$400.00.

2.3 Beer, Wine & Liquor Licenses

(a) Class B - BWL - (H-R) (on sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer, wine, and liquor at retail for consumption on the premises only, subject to the provisions and restrictions of **Article 2B, Section 6-201(a) and (q)**.

The annual fee for this license is \$2,500.00, or \$5,000.00 if the license is issued pursuant to Article 2B, Section 6-201(q)(2)(v)(2). Alcoholic beverages cannot be served from a cafeteria style serving line; servers must bring alcoholic beverages to seated patrons.

(b) Catering Privilege License:

(1) **Article 2B, Section 6-706** authorizes the holder of a Class B, Beer, Wine, and Liquor License, On Sale Only, Hotel/Restaurant to provide alcoholic beverages along with food for consumption at catered events that are held off the licensed premises. The privilege of providing alcoholic beverages along with catered food may be granted by the Board of License Commissioners only after the holder files a catering privilege application with the Board. If the Board approves the catering privilege application, a Class B-BWL catering privilege license will be issued. The license issued hereunder must be on the premises of each catered event. There is no annual fee for this catering privilege license, if an applicant or holder applies for this privilege at the time of application for a new or renewal license. In all other cases, an administrative fee under Section 3.12 of these Rules will apply at the time the Board approves the catering privilege application.

(2) The holder of a catering privilege license must meet all the requirements set forth in Article 2B, Section 6-706. Fourteen (14) days before each event, the holder of the catering privilege license must provide the Board with written notification of the location, date and time of the catered event, as well as a list of the food and alcoholic beverages to be provided, the number of guests expected to be in

attendance, whether the event will take place indoors or outdoors, and the nature of the security to be provided. **(This subsection revised September 6, 2007.)**

(3) This section shall not be construed as authorizing any of the privileges of Article 2B, Section 12-301(d). The holder cannot provide only alcohol; the holder must provide and serve food as well as alcoholic beverages at the catered event.

(c) Class B – BWL - (H-M) (on sale only): a license issued by the Board of License Commissioners for Montgomery County that authorizes the licensee to keep for sale and to sell beer, wine, and liquor at retail for consumption on the premises only, subject to the provisions and restrictions of **Article 2B, Section 6-201**. The annual fee for this license is \$2,500.00.

(d) Class C (on sale only): a license issued by the Board of License Commissioners for Montgomery County, that authorizes the licensee to keep for sale and to sell beer, wine, and liquor at retail at any club for consumption on the premises only, to any member of the club or bona fide guest(s) of a member subject to the provisions and restrictions of **Article 2B, Section 6-301**. The annual fee for this license is \$1,000.00 or as otherwise provided in Article 2B, Section 6-301.

(e) CAT (Caterer's) License: **Article 2B, Section 6-706.1** authorizes the issuance of a CAT (Caterer's) license and permits the holder to exercise the same privileges as a Class B, Beer, Wine, and Liquor License. Upon Board approval of the catering application, a CAT (Caterer's) license will be issued. The holder of a CAT license must meet all the requirements set forth in Article 2B, Section 6-706.1.

The holder must provide and serve food as well as alcoholic beverages at the catered event. This section shall not be construed as authorizing any of the privileges of Article 2B, Section 12-301(d). The Board must receive written notification as to the location, date and time of each catered event prior to the event. The license issued hereunder must be on the premises of each catered event. The annual fee for this license is \$1,250.

2.4 Temporary Licenses

(a) Class C, Beer License - Seven days: a special beer license issued by the Board of License Commissioners for Montgomery County, that entitles the licensee to exercise any of the privileges conferred by a Class C license for the sale of beer subject to the provisions and restrictions of **Article 2B, Section 7-101**. The fee for this license is \$30.00 per day.

(b) Class C, Beer and Wine License - Seven days: a special beer and wine license issued by the Board of License Commissioners for Montgomery County, that entitles the licensee to exercise any of the privileges conferred by a Class C license for the sale of beer and wine subject to the provisions and restrictions of **Article 2B, Section 7-101**. The fee for this license is \$30.00 per day.

(c) Class C, Beer, Wine and Liquor License - Seven days: a special beer, wine, and liquor license issued by the Board of License Commissioners for Montgomery County, that entitles the licensee to exercise any of the privileges conferred by a Class C license for the sale of beer, wine, and liquor subject to the

provisions and restrictions of **Article 2B, Section 7-101**. The fee for this license is \$60.00 per day.

(d) Any temporary license issued under this section includes the entire grounds for an outdoor function for which the license is granted.

(e) Temporary licenses may only be issued to a club, society, or association, as defined in Article 2B, Section 1-102-(a)(4)(i).

(f) Community Swimming Pool Clubs may obtain temporary licenses in accordance with Article 2B, Sections 7-101(b)(10)(ii) and (d)(10)(ii).

CHAPTER 3

APPLICATIONS

3.0 Applications for Licenses

(a) Any application for an alcoholic beverage license, transfer of a license, or renewal of a license must be made to the Board upon standard forms obtained from the Board. All applications must be legible, and printed in blue or black ink, so as to be easily read and reproduced.

(b) All applications must be made under oath subject to the penalties of perjury and attested to by a Notary Public.

(c) All applications must be fully completed before submission to the Board. A hearing date will not be scheduled until the Board receives a completed application.

(d) Every applicant, except those applicants applying for a temporary license issued under Article 2B, Section 7-101, must have his or her fingerprints taken, and must pay to the Board the processing cost charged for the required fingerprints.

Article 2B, Section 10-103(b)(13)(iv)

(e) Filing fee. A fee of \$500.00 to cover the cost of providing notice of the application and associated administrative costs must accompany each application for an alcoholic beverage license.

Article 2B, Section 10-105

3.1 Notice

Article 2B, Section 10-202

(a) Publication:

(1) Before considering a license application, the Board must publish a notice of the application twice a week for two (2) consecutive weeks in two (2) newspapers of general circulation in the County.

(2) The notice must specify the name(s) of the applicant(s), the kind of license applied for, the location of the place of business proposed to be licensed, and the time and place fixed by the Board for a hearing upon the application.

(3) The hearing on the application will not be held less than seven (7) days nor more than thirty (30) days after the last date of publication.

(b) Posting:

(1) In addition to the publication requirements set forth in subsection (a) above, the Board requires that a suitable sign or notice be posted at least thirty (30) days before the public hearing on the application. This notice must remain posted for a period of thirty (30) days, in a conspicuous place on the premises that is clearly visible to the general public.

(2) The posted notice must specify the class of license applied for and the time and place fixed for a hearing upon the application.

3.2 Updating of Applications

(a) Any change in the pertinent information contained in any application filed with the Board must be reported to the Board within fifteen (15) days of the change. This includes, for example, change of name, change of telephone number,

change of address, death of a licensee, dissolution of a corporation, election or change of an officer or authorized person who is listed as an applicant or licensee.

(1) Any change on a licensee's application concerning the removal, addition, or substitution of a licensee must be accompanied by a \$100.00 processing fee. Any change concerning a corporate or limited liability company application also requires:

(i) an application for substitution of corporate officers or authorized persons on the form provided by the Board;

(ii) a signed letter of resignation from the outgoing corporate official(s) or authorized person(s); and

(iii) a certified copy of the corporate or limited liability company minutes indicating the substitution of corporate officer(s) or authorized person(s).

(b) The Board's administrative staff may interview and conditionally approve any person who is proposed by the licensee as the new resident applicant on an existing license, subject to final approval by the Board at its next regularly scheduled meeting.

3.3 Applications by Sole Owners Article 2B, Section 10-103(b)(4)(i)

A person who applies for an alcoholic beverage license or transfer of license as a sole owner must have resided in Montgomery County for two (2) years immediately preceding the application for the license, and must continue to reside in Montgomery for the duration of the alcoholic beverage license.

3.4 Applications by Partnerships Article 2B, Section 9-101(a)

If an application is made for a partnership, the license must be applied for by and issued to at least two (2) general partners as individuals, at least one (1) of whom has resided in Montgomery County for at least two (2) years prior to the application, and must continue to reside in the County as long as the licensee holds the alcoholic beverage license. If there is only one (1) general partner, the license shall be issued to that partner as an individual, if that individual has resided in Montgomery County for at least two (2) years prior to the application for the license, and continues to reside in the County as long as the licensee holds the alcoholic beverage license.

3.5 Applications by Corporations or Clubs

Article 2B, Section 9-101(a), (b)

If an application is made for a corporation, or a club, whether incorporated or unincorporated, the license must be applied for by, and be issued to, three (3) of the officers of that corporation or club, as individuals, for the use of the corporation or club, and at least one (1) of the individuals must reside in Montgomery County for at least two (2) years prior to the application, and must continue to reside in the County as long as the licensee holds the alcoholic beverage license. The application must set forth the names and addresses of all officers of the corporation or club, and must be signed by the president or vice-president as well as by the three (3) officers to whom the license will be issued. In the case of a corporation where there are less than three (3) officers or directors of the corporation, all officers or directors must make the application as provided in this section. In the event that there are no officers or directors of a closed corporation, at least one (1) stockholder may make

the application as provided in this section, if there is an affirmative vote of the stockholders holding a majority of the stock.

3.6 Applications By Limited Liability Companies

Article 2B, Section 9-101(a), (c)

If an application is made for a limited liability company, the license must be applied for by, and issued to, three of the authorized persons of that limited liability company, as individuals, and at least one of these authorized persons must have resided in Montgomery County for at least two (2) years prior to the application, and must continue to reside in the County as long as the licensee holds the alcoholic beverage license. If the limited liability company has less than three authorized persons, then all of the authorized persons must make the application.

3.7 Interest in More than One License

Article 2B, Section 9-102, 9-102.1

A licensee holding a Class B (on sale - hotels/restaurants or hotels/motels) beer, wine, and liquor license may apply for an additional license or licenses subject to the provisions and limitations set forth in Article 2B, Section 9-102, and Section 9-102.1.

3.8 Issuance of a License

Article 2B, Section 10-503(a)

Before any new license, transfer of an existing license, extension of the premises of an existing licensed premise, or renewal of an existing license is issued, the licensee(s) must comply with:

- (i) the requirements of Article 2B of the Annotated Code of Maryland, including obtaining a Bulk Transfer Permit and paying all personal property, retail sales, and withholding taxes, if required;
- (ii) the Rules and Regulations of all State and County agencies; and
- (iii) any other conditions or restrictions placed upon the issuance of the license by the Board.

3.9 Renewal of a License

Article 2B, Section 10-301

License renewals will be handled in accordance with the provisions of Article 2B, Section 10-301, and as described in this section.

(a) Applications

(1) Applications for renewal of licenses must be filed between February 1 and March 31 of each year on forms provided by the Board. The Board may receive late applications during April, and may fine the licensee in an amount not to exceed \$50.00 for each day the application is late.

(2) If an expiring license is subject to any restriction or suspension, the new license will be issued subject to the same restriction or suspension.

(3) A fee of \$100.00 must be paid at the time a renewal application is submitted to cover the cost of processing the application.

(b) Renewal Hearings

(1) A hearing on the renewal application will not be scheduled unless:

(i) a protest against the granting of the renewal is filed no more than ninety (90) days and at least thirty (30) days before the expiration of the license for which renewal is sought, and includes the name and location of the facility, the reason(s) for the protest, the printed name and address of each person signing the protest, the signature and date of each person signing the protest, and is signed by at least ten (10) residents or real estate owners in the immediate vicinity in which the licensee's place of business is located; or

(ii) the Board in its own discretion deems such a hearing is necessary.

(2) All renewal hearings will be heard and determined in the same manner as a case for an original application for a license.

(c) If the Board finds that a licensee is not qualified to obtain a renewal of the expiring license, the Board will not renew the expiring license, but may issue instead a renewal of the class or type of license for which the Board finds the licensee to be qualified.

(This section revised October 1, 2009.)

(d) Criminal Convictions

(1) The Board will not renew the license of any person who during the license year has been convicted of any offense against the laws of the State or the United States which in the judgment of the Board is of such a nature as to render the licensee unfit or unqualified to obtain a renewal of the license.

(2) In all cases where a renewal may be denied on the basis of a criminal conviction, the Board will hold a public hearing at which all relevant facts and circumstances of the offense may be inquired into, before the Board renders a decision regarding renewal.

(e) Any licensee who fails to have the renewed license on the licensed premises by opening of business on May 1st may be charged with a violation of the provision regarding display of licenses.

Article 2B, Section 10-505

3.10 Transfer of a License

Article 2B, Section 10-503

(a) If holder(s) of a license transfer less than 51% of the ownership interest in the licensed premises, the holder(s) must notify the Board of the change in ownership interest.

(b) Holder(s) of a license may transfer 51% or more of the ownership interest in the licensed premises only if:

(1) a completed written alcoholic beverage license transfer application is filed with the Board before the proposed transferee begins operation of the business. With the completed transfer application, the holder(s) must file a Transfer Permission Form which must be signed by all current licensees of record.

(2) All state taxes and local taxes owed by the transferor have been paid. No transfer of any license under the jurisdiction of the Board will be issued while there is outstanding any monies owed by the transferor to Montgomery County, the Department of Liquor Control, the Board of License Commissioners, or the Comptroller's Office of the State of Maryland; however, where the transferee

gives the Board written certification, under oath subject to penalties of perjury, and attested to by a Notary Republic, that he or she assumes the debt of the transferor, the Board may approve the transfer application contingent upon payment of the debt on or before a date that the Board deems appropriate.

(3) The Board approves the transfer application after public notice and hearing using the same criteria as used in a case of a new application.

(c) No application for a transfer of license which is to become effective prior to May 1st of the year in which the transfer is to take place will be processed by the Board after April 1st of that year.

(d) Upon receipt of notice of the Board's approval of a transfer of license, the transferee must within thirty (30) days of the date of said notice:

- (1) obtain a State food license;
- (2) obtain a valid use and occupancy permit;
- (3) obtain an approved bulk transfer permit;
- (4) have all State taxes transferred to the transferee's name; and
- (5) have the alcoholic beverage license transferred to the transferee's name.

(e) In the event a transfer application is denied, the existing license must immediately be returned to the Board, and the licensee and transferee must make arrangements for the removal of all alcoholic beverages from the premises, unless the licensee agrees to resume operations within ten (10) days after the denial.

(f) If the transferee, while operating the licensed premises under the transferor's alcoholic beverage license, fails to file a completed alcoholic beverage

transfer application with the Board, a 48-hour notice to file a transfer application may be issued. If the completed transfer application is not filed within the 48 hour time period, a cease alcoholic beverage sales order may be issued to the facility. The cease sales order will remain in effect until a completed transfer application is filed.

(g) If a licensee is charged with a violation during the transfer interim period (after a new owner/transferee has taken over the business but before the scheduled date for the hearing on the transfer application), a cease alcoholic beverage sales order may be issued by the Board to remain in effect until a show cause hearing on the violation is held, the transfer hearing is held, or the Board rescinds the cease sales order.

3.11 Construction, Expansion, or Alteration of Premises

(a) A license issued contingent upon the construction of a facility in which the license is to be used will expire twenty-four (24) months after the date of approval, unless the license is issued, or an extension is approved by the Board.

(b) A licensee must not make any installation or structural alteration or addition, other than cosmetic changes such as paint, wallpaper, furnishings, carpet, etc., to the licensed premises, or change the manner in which alcoholic beverages are dispensed, without first obtaining permission from the Board.

(c) A licensee must not make any such installations, alterations, or additions to the licensed premises until the appropriate public authorities of the State of Maryland, Montgomery County, or local government have issued the required permits or approval necessary to make the installations or alterations. This section

requires that licensees first obtain a building permit from the Montgomery County Department of Environmental Protection, and secure approval from the Montgomery County Department of Health and Department of Fire and Rescue Services, where such approval is required.

(d) All installations, alterations, and additions approved by the Board must be completed by the licensee within the time period directed by the Board, not to exceed twenty-four (24) months from the date of approval, unless an extension of time is approved by the Board. Failure to do so may cause the Board to rescind the approval previously granted.

(e) Every licensed premise is required to have at least one plain/clear window or door so as to allow a person standing outside of the licensed premise a clear view inside to observe the interior of the premise at all hours. Further, no curtain, blind, screen, advertising material, tinting (no more than 15%) or other obstruction shall be permitted before or on such window or door.

Licensees faced with extenuating conditions may petition the Board in writing for a waiver. The Board will respond in writing to the licensee either granting or denying the waiver.

(This section revised December 16, 2010.)

3.12 Administrative Fees

Article 2B, Section 10-503(a)(3)

An administrative fee will be charged for issuing the alcoholic beverage license for a transfer, transfer of location, reclassification, or any other change on the license.

3.13 Drive - Through Sales

The Board will not issue, transfer, or approve any application for an off-sale alcoholic beverage license of any class for use in a business that is intended to be operated as a drive-through purchase facility where alcoholic beverages are to be sold at retail and dispensed through a window or door to a purchaser in or on a motor vehicle for off premises consumption.

CHAPTER 4

HEARINGS AND RULES OF PROCEDURE

4.0 Hearings

The Board must hold hearings concerning the applications for licenses, renewals of licenses, transfers of licenses, and show cause hearings authorized under Article 2B of the Annotated Code of Maryland. At all such hearings, at least three (3) members of the Board must be present to constitute a quorum for the transaction of the Board's business.

4.1 Definitions

- (a) Board: The Montgomery County Board of License Commissioners.
- (b) License hearing: A hearing held before the Board pursuant to Article 2B, Section 10-202 of the Annotated Code of Maryland for the purpose of deciding whether to issue, deny, renew, reclassify, or transfer the license of an applicant.
- (c) Show cause hearing: A hearing held before the Board pursuant to Article 2B of the Annotated Code of Maryland and/or these Rules and Regulations for the purpose of deciding whether to suspend or revoke the license of a licensee, or to impose a fine in lieu of suspension or revocation.

4.2 Notice of Hearing

- (a) New, transfer, transfer of location, or reclassification of license applications.

(1) Publication - Before the Board will approve any new, transfer, transfer of location, or reclassification license application, it must publish a notice of such application two (2) times in two (2) successive weeks in each of two (2) newspapers of general circulation in the County. The notice must specify the name of each applicant for the license, the kind of license applied for, the location of the place of business proposed to be licensed, and the time and place fixed by the Board for hearing on the application. The hearing on the application must take place not less than 7 nor more than 30 days after the last date of publication.

(2) Posting - In addition to the publication requirement of Section 4.2(a)(1), the Board requires for all new, transfer, transfer of location, or reclassification licensure applications that a suitable sign or notice be posted at least 30 days before the hearing. This notice must be posted in a conspicuous place on the premises described in the application. The notice must specify the class of the license applied for and the time and place fixed for a hearing on the application.

(b) Show cause hearing - The Board must notify a licensee at least ten (10) days before the date of a show cause hearing where the licensee is required by law to show cause why the license should not be suspended or revoked. The notice must specify the charges against the licensee and the time and place of the hearing. The notice must be in writing and may be:

- (1) hand-delivered; or
- (2) sent by both certified mail, return receipt requested, and first class mail, postage prepaid to the licensee.

4.3 Rules of Procedure

Rule 1: Time and place

Hearings before the Board must be held at the time and place as designated in the notice, except for hearings which are continued. All hearings are open to the public, in accordance with the open meetings law.

Rule 2: Official record

The Board must prepare, maintain, and supervise the custody of an official record in each case which must include a verbatim transcript, if one is prepared, and exhibits, if any, which have been submitted during the hearing and at such time as the record may be open for such purposes. Documentary evidence may be received in the form of copies, excerpts, photographic reproductions or by incorporation by reference.

Rule 3: Ex parte communication

(a) This Rule applies to any ex parte or private communication, written or oral, received by a member of the Board, if:

(1) The communication relates to a contested matter before the Board;

(2) All appellate rights regarding the contested matter have not been exhausted; and

(3) The Board is required by law to make a decision on the matter based on the record before it.

(b) This Rule does not apply to:

(1) legal advice from its attorney or technical advice rendered by an employee of the Board at the Board's request, or

(2) any communication about the status or procedure of a pending matter.

(c) If a member of the Board receives an oral ex parte or private communication, that member must reduce the substance of the communication to writing within reasonable time after receipt of the communication.

(d) The Board must send a written notice to all parties that:

(1) discloses the content of the ex parte or private communication, and

(2) tells whether the Board will consider the ex parte or private communication as a basis for its decision, in accordance with paragraphs (e)(1) and (e)(2).

(e) The Board must include the ex parte or private communication in the record and may:

(1) consider the communication as a basis for its decision after giving all parties an opportunity to respond to the communication; or

(2) decide the matter if the Board expressly finds that it has not considered the communication as a basis for its decision.

Rule 4: Evidence

The Board may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be

reliable in nature. The Board may exclude incompetent, unreliable, irrelevant, or unduly repetitious evidence, or produce evidence at its own request. The Board may take official notice of commonly cognizable facts, facts within its particular realm of administrative expertise, and documents or matters of public record.

Rule 5: Cross-examination

Each party has the right of reasonable cross-examination of witnesses who testify, and may submit rebuttal evidence. Repetitious questions and examination on irrelevant matters is not permitted. Cross-examination is subject to reasonable regulation by the Board including designation of specific persons to conduct cross-examination on behalf of other individuals.

Rule 6: Right to counsel

In any case governed by these procedures, all parties have the right to be represented by themselves or by an attorney of their choice. Within 48 hours after being retained by a party, counsel must file a written notice of appearance with the Board and send copies of the notice to all other parties of record.

Rule 7: Powers of the Board in conducting a hearing

In addition to any of the powers granted to the Board by Article 2B of the Annotated Code of Maryland, the Board is empowered to:

- (a) Require witnesses to be sworn;
- (b) Rule upon motions, offers of proof and receive relevant and probative evidence, exclude incompetent, irrelevant, immaterial or unduly repetitious evidence and give effect to the rules of privilege recognized by law;

- (c) Regulate the course of the hearing and allow the record in hearings to remain open;
- (d) Dispose of procedural requests or similar matters, including requests for a continuance;
- (e) Call, examine, and cross-examine witnesses and obtain and introduce into the record documentary or other evidence;
- (f) Request the parties at any time during the hearing to state their respective positions or theory concerning any issues in the case;
- (g) Take any action authorized by law or necessary to a fair disposition of a case;
- (h) Accept evidence by stipulation of facts;
- (i) Schedule, suspend, or continue hearings to a time and date certain with notification to all parties;
- (j) Upon its own motion or at the request of an affected party, order that witnesses other than a party be excluded from the hearing room until called to testify; and
- (k) Permit additional parties to participate in a hearing as justice may require.

Rule 8: Offer and compromise

When a licensee is notified to appear before the Board for a show cause hearing, the Board may make an offer and recommendation or compromise by which the licensee voluntarily waives the right to the show cause hearing, admits the violation as charged, and agrees to pay a monetary fine, or elects to have its

alcoholic beverage license suspended for a specified period, as determined by the Board. All such agreements of offer and compromise must be recorded on a form provided by the Board.

Rule 9: Conduct of show cause hearing

Unless otherwise provided by law, the ordinary but not mandatory protocol for the conduct of a show cause hearing before the Board is as follows:

- (a) Disposition of all outstanding preliminary motions and matters;
- (b) Opening statements of the parties;
- (c) Presentation of factual case of the complaining party; cross-examination of all witnesses;
- (d) Presentation of factual case of the responding party; cross-examination of all witnesses;
- (e) Presentation of factual case of any other interested party; cross-examination of all witnesses;
- (f) Rebuttal evidence of the complaining party; cross-examination of all witnesses;
- (g) Surrebuttal evidence of the responding party; cross-examination of all witnesses;
- (h) Closing arguments.

Any decision by the Board to follow a protocol other than the ordinary protocol must be given to all parties to the show cause hearing at least 2 weeks before the date of the hearing.

Rule 10: Failure to appear

Upon the failure or refusal of a responding party to appear at a hearing, and upon finding that such party had timely legal or actual notice of the hearing, the Board may receive evidence from the complaining party and decide the case as if all parties were present.

Rule 11: Decisions

(a) The decision of the Board must be made on the basis of all evidence of record. The Board must prepare and issue a written resolution which contains a detailed statement of the grounds and findings forming the basis for the decision and conclusions of law, and the vote of each member of the Board on the decision.

(b) A copy of the resolution must be forwarded to the applicant or licensee and to all persons who request one in writing or on the record. The resolution will be hand-delivered; or sent by both certified mail, return receipt requested, and first class mail, postage prepaid. In the case of a denial, suspension or revocation, or fine in lieu of suspension or revocation, of a license, the Board must inform the applicant or licensee in writing of the procedures for an appeal.

Rule 12: Suspension/Revocation Notices, Posting Of - Other Closing Notices Prohibited

If the Board suspends or revokes the license of any retail licensee, the Board must post a notice on the date the suspension or revocation takes effect in a conspicuous place on the licensed premises in a form prescribed by the Board. The notice must indicate that the license has been suspended or revoked by order of the

Board, and must include any specific violation of the Maryland State Alcoholic Beverage Laws, and Rules and Regulations of the Board of License Commissioners.

A person must not remove or alter the notice until the suspension period has expired, nor shall any notice of any kind be placed in, or about the premises indicating that the same has been closed for any other reason. The Board must have the premises inspected regularly during the suspension period for compliance with this regulation.

Rule 13: Fine in lieu of suspension or revocation

(a) In lieu of suspending or revoking an alcoholic beverage license for any cause for which the Board is permitted but not required to suspend or revoke a license pursuant to the provisions of Article 2B, Section 10-401 of the Annotated Code of Maryland, the Board may impose a fine for any such violation, subject to the following conditions:

(1) The Board determines that the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension period, and that the payment of the fine will achieve the desired disciplinary purposes;

(2) The fine assessed does not exceed \$20,000.00 as allowed by Article 2B, Section 16-507, for each case; and

(3) All fines collected under this provision must be deposited into the Montgomery County general fund.

(b) The Board, when it acts to impose a fine on the licensee, must prepare and issue a written resolution which must contain a statement of the facts

and findings forming the basis for the decision, the vote of each member of the Board on the decision, and information on how to appeal the decision. A copy of the resolution must be hand-delivered; or sent by both certified mail, return receipt requested, and first class mail, postage prepaid to the licensee.

(c) The Board must issue a notice to stop selling alcoholic beverages to any licensed facility which does not pay the fine assessed by the due date in the show cause resolution. This notice remains in effect until the fine is paid in full or, at the Board's discretion, the notice is rescinded.

Rule 14: Motion for reconsideration

(a) Within ten (10) days after the Board issues a written decision on an application for an alcoholic beverage license or on a matter concerning a licensed premises, an applicant or a licensee may file a motion for reconsideration with the Board.

(b) The Board must at its next session decide by majority vote whether to grant or deny the motion for reconsideration.

(1) If the Board denies the motion for reconsideration, the Board's original decision remains in effect.

(2) If the Board grants the motion for reconsideration, the case is reopened and the Board may:

(i) order that another hearing on the case be scheduled;

(ii) issue a new decision amending its prior decision;

or

(iii) retain its original decision.

(c) The filer of the motion for reconsideration must mail or otherwise deliver a copy of the motion to all parties of record.

(d) A motion for reconsideration does not stay the effect of the Board's decision unless the Board orders otherwise.

Rule 15: Appeals

A final decision by the Board on an application for an alcoholic beverage license or on a matter concerning a licensed premises may be appealed to the Circuit Court for Montgomery County, under the applicable Maryland Rules of Procedure governing administrative appeals. An appeal does not stay the effect of the Board's decision.

Rule 16: Stay pending appeal

(a) Upon the filing of an appeal and where there would be no immediate danger to the public health, safety, or welfare, the Board may stay the effect of its decision pending a final determination on appeal.

(b) A written application for a stay of the Board's decision must be filed, by the licensee, no later than 10 days after the date of the decision.

(1) The Board must take up a timely filed written application for a stay of the Board's decision at its next regularly scheduled meeting and issue its decision on the stay in writing within 5 business days thereafter. Notice of the Board's decision must be either hand-delivered or sent by both certified mail, return receipt requested, and first class mail, postage prepaid to the licensee.

4.4 Open Meetings

(a) Notice of Meetings: The Board must give reasonable advance notice of meetings that are subject to the Open Meetings Law pursuant to the provisions of that law. All advance notice must comply with the sign posting and advertising requirements of Article 2B of the Annotated Code of Maryland, Section 10-202.

(b) Public Attendance:

(1) At any open session of the Board of License Commissioners, the general public may attend and observe.

(2) Except when the Board expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open session may participate in the session.

(c) Disruptive Conduct:

(1) A person attending an open session of the Board must not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes with the right of members of the public to attend and observe the session.

(2) The presiding officer may order any person who persists in conduct prohibited by subsection (a) or who violates any other regulation concerning the conduct of the open session to be removed from the session, and may request police assistance to restore order. The presiding officer may recess the session until order is restored.

(d) Recording, Photographing, and Broadcasting of Open Sessions.

(1) A member of the public including any representative of the news media, may record discussions of the Board of License Commissioners at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(2) A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera:

(i) is operated without excessively bright artificial light which disturbs members of the Board or other persons attending the session;

(ii) does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(3) A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used:

(i) is operated without excessively bright artificial light which disturbs members of the Board or other persons attending the session;

(ii) does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(4) The presiding officer may restrict the movement of a person who is using a recording device, camera, or broadcasting or televising equipment, if that restriction is necessary to maintain the orderly conduct of the session.

(e) Recordings Not Part of Record: A recording of an open session made by a representative of the news media or other member of the public, or any transcript derived from such a recording, must not be deemed a part of the record of any proceeding of the Board.

(f) Closed Meetings:

(1) The Board may hold closed meetings as allowed by the Maryland Annotated Code, State Government Article, Section 10-508(a). The Board must approve the closed meeting by a majority vote. The Board must take the vote before the closed meeting and must make a written statement of the reason for the closed meeting, including a citation of the authority under State law that justifies closing the meeting. If a person objects to the closed meeting, the Board must send a copy of the written statement to the Open Meetings Compliance Board.

(2) Minutes must be taken of the closed meeting that include a list of the topics discussed, the persons present, and each action taken during the closed meeting. The minutes must be carefully worded to avoid disclosing information that would negate the purpose of closing the meeting.

CHAPTER 5

STANDARDS OF OPERATIONS

5.0 Compliance with Laws and Regulations

Licensees must operate their establishments at all times in accordance with the requirements of all federal, state, and local laws, and the Board's Rules and Regulations.

5.1 Licensee's Responsibility

Each licensee is personally responsible for the operation of the licensed premises, and is responsible for any violation of Article 2B of the Annotated Code of Maryland and/or these Rules and Regulations committed not only by the licensee but also by any other licensees, and by the licensees' agents, employees, and operators.

5.2 Changes in Licensing Information

Before making any changes to the licensing information as reflected in the licensee's original license application or in any renewal thereof, the licensee must first notify the Board in writing.

5.3 Inspections

Article 2B, Section 6-201(q)

- (a) All licensed facilities will be inspected at least twice annually.
- (b) All newly issued or transferred Class B-BWL licenses (on-sale) will be subject to monthly inspections and/or audits during the first year of operation after issuance of the license.

5.4 Alcohol Awareness Certification

Article 2B, Section 13-101

(a) A holder of any class of retail alcoholic beverage license or an employee designated by the holder must complete training in an approved alcohol awareness program. The training should be valid for a period of 4 years, and the holder must complete retraining in an approved program for each successive 4-year period.

(b) Approved alcohol awareness programs are programs that are approved and certified by the State Comptroller and have been issued an alcohol awareness program permit by the State Comptroller. These programs must include instruction on how alcohol affects a person's body and behavior; provide education on the dangers of drinking and driving; define effective methods for serving customers to minimize the chance of intoxication, include instruction on ceasing service before customers become intoxicated; and instruction on determining if a customer is under 21 years of age.

(c) A person who is certified by an approved alcohol awareness program must be present on the licensed premises, during the hours in which alcohol may be sold. This person may be either the licensee or a person who is employed by the licensee in a supervisory capacity.

(d) An up-to-date valid certificate from an approved alcohol awareness program must be presented to the proper authority upon request.

(e) The penalty imposed for failure to have a person who has been certified by an approved alcohol awareness program on the licensed premises

during the hours in which alcohol may be sold is as follows: First offense \$100 fine; for each subsequent offense, a fine not to exceed \$500 or a suspension or revocation of the license, or both.

5.5 Records

Article 2B, Section 14-201

(a) Alcoholic Beverage Purchases. Licensees must keep accurate records of all purchases of alcoholic beverages for a period of two (2) years from the date of each purchase. These records must include the date of each purchase, the quantity purchased, and the name and address of the seller. These records must be maintained on the licensed premises and must be available for inspection and produced upon request at all times by all duly authorized representatives of the Board.

(b) Current and Past Employees. Licensees must keep on their licensed premises records containing the legal names, addresses, and dates of birth of all persons currently employed by the licensee on the licensee's establishment, and of all persons so employed in the preceding twelve (12) month period. Records for current employees must be available at all times for inspection by a duly authorized representative of the Board. All records on former employees must be made available, upon request, within a reasonable period of time.

5.6 Ratio Accounting Procedures

Article 2B, Section 6-201(a), (q)

(a) Licensees holding a Class B, BWL license (on-sale) must ensure that the gross receipts from food sales are at least equal to the gross receipts from the sale of alcoholic beverages.

(b) Receipts from Sale of Food – In calculating the gross receipts from the sale of food, any food stuff, soft drink or other non-alcoholic beverage contained in any mixed drink must not be included in the calculation. The entire price of a mixed drink must be contained in the licensee's calculation of the gross receipts from the sale of alcohol.

(c) A cover charge cannot be used in calculating food or alcohol ratios. For purposes of this section, a cover charge means any charge that a licensee requires a patron to pay before the patron will be admitted to the licensed premises which does not include an identified alcoholic beverage or item of food to be served to the patron.

(d) During the first year after the issuance or transfer of a Class B-BWL license, the licensee(s) must submit ratio reports to the Board every month. The reports must be made under oath, subject to penalties of perjury, and must be witnessed by a Notary Public.

(e) The Board may conduct, as needed, an audit of the licensee's records to determine the ratio of gross receipts from the sale of food to gross receipts from the sale of alcoholic beverages, pursuant to Article 2B, Section 6-201 of the Annotated Code of Maryland. The Board may require any licensee to provide supporting data which the Board, in its discretion, deems necessary to establish that the ratio requirements have been met.

(f) In the event that a licensee fails to maintain the sales ratio requirement for a period of three consecutive months during the initial license year, or after the

initial license year for the license or calendar year, the Board may, in its discretion, revoke the license.

5.7 Display of Licenses

Article 2B, Section 10-505

Each licensee must place the alcoholic beverage license issued by the Board in a frame, under glass, and must place the license so that it is clearly visible and easily read in the licensee's place of business.

5.8 Availability of Food

All Class B and H, on-sale, or on/off sale licensed establishments must have food for sale during all hours in which alcoholic beverages may be offered for sale. Food must consist of a variety of hot and cold meals that are offered on a printed menu and are available to patrons. It is permissible to offer a limited "late night" menu offering such items as soup, salad, sandwiches, appetizers, etc. Peanuts, popcorn, potato chips do not meet the availability of food requirement of this section.

5.9 Retail Delivery (off premises)

Article 2B, Section 12-301

(a) Retail deliveries are only permitted if the licensee obtains a letter of authorization from the Board of License Commissioners to make deliveries, and complies with all the provisions regarding delivery contained in this regulation.

(b) Licensees are prohibited from contracting out for the off-premises delivery of alcoholic beverages to an independent delivery or courier service.

(c) The delivery must be made from the licensed premises and may only be made within Montgomery County.

(d) The licensee or the licensee's agent making the delivery must be twenty-one years old; or eighteen (18) years of age and accompanied by a supervisor who is at least 21 years old.

(e) The licensee or the licensee's agent making the delivery can only deliver the alcoholic beverages to an individual who is twenty-one (21) years of age or older, after the person taking possession of the alcohol presents the deliverer with a valid identification showing the individual's photograph and date of birth.

(f) The person taking possession of the alcoholic beverages must sign a written certification as set forth in Article 2B of the Annotated Code of Maryland, Section 12-109, detailing the valid form of identification presented to the deliverer.

(g) The licensee must retain all written certifications on the licensed premises for at least one (1) year, and must make the certifications available for inspection by an authorized representative of the Board of License Commissioners during regular business hours.

5.10 Dispensing of Liquor

A licensee, his or her agent(s) and/or employee(s) must not sell, serve, or furnish any alcoholic beverage (other than beer, wine and miniatures) by the bottle for consumption on the premises, except Class B-BWL licensees serving alcoholic beverages to patrons in rented or leased private rooms, or Class C, BWL licensees as described in Article 2B, Section 6-301.

5.11 Beverages from Faucets, Spigots, etc./Labeling

A licensee, his or her agent(s) and/or employee(s) must not furnish or serve any beer, wine, or liquor from any bottle, faucet, spigot, or other dispensing apparatus unless the trade name or the brand name of the products served appears in full sight of the customer in legible lettering upon the bottle or dispensing apparatus.

5.12 Beer Keg Registration

Any licensee who sells or offers for sale kegs or other containers holding 4 gallons or more of beer to consumers for off-premises consumption must require the purchaser to:

- (a) provide a valid form of identification as defined in §1.7 of the Rules and Regulations of the Board of License Commissioners;

- (b) complete and sign a keg registration form.

- (1) The keg registration form provided and distributed by the State Comptroller's Office must be properly completed by both the licensee and purchaser, and be affixed to the keg by the licensee before the keg is taken off the licensed premises.

- (2) The purchaser must provide on the keg registration form the purchaser's name, address, and signature.

- (3) Where the purchaser obtains more than one keg for off-premises consumption a separate keg registration form must be completed and affixed to each keg purchased.

(4) The licensee must print on the keg registration form the name of the licensed facility, city or town where located, purchase date, date of birth of purchaser, type and number of ID shown, clerk's name, and whether the keg container is disposable.

(5) The licensee must keep a copy of the completed registration form for 30 days on the licensed premises.

(6) The licensees may charge a keg registration fee to the purchaser.

(7) Upon return of a registered keg from the purchaser, the licensee must remove or obliterate the keg registration form affixed to the keg, and that removal and the date of that removal on the copy of the keg registration form must be retained by the licensee on the licensed premises.

(8) If a keg is made of disposable packaging that does not have to be returned to the licensee, the licensee must indicate on the keg registration form that the keg is disposable.

(9) Disposal of empty kegs made of disposable packaging does not constitute obliteration of the keg registration form.

(10) The existence of a completed keg registration form on the licensed premises, signed by the purchaser, creates a presumption that the licensee has complied with the requirements of this section.

(11) Keg registration forms are not transferable and may only be issued from the licensed establishment to which the keg registration forms were

assigned. The keg registration forms are assigned by the Maryland State Comptroller's Office.

(c) A licensee who violates any provision of this section is subject to a fine not to exceed \$100 or a suspension or revocation of the alcoholic beverage license; both a fine and suspension or revocation may be imposed.

5.13 Special Class C Licenses – Kegs

All kegs purchased for consumption at events that have been issued a Special Class C temporary alcoholic beverage license must be purchased directly from an alcoholic beverage licensed retail establishment within Montgomery County, or from the Montgomery County Department of Liquor Control Warehouse. This prohibition will ensure compliance with the keg registration law of the State of Maryland and Montgomery County.

5.14 Outdoor Cafes

(a) Licensees may operate an outdoor cafe as part of the licensed premises only with the express approval of the Board. The Board may modify, suspend, or revoke the outdoor cafe privilege.

(b) Outdoor cafes approved by the Board must:

(1) be contiguous to the licensed premises, enclosed in a clearly delineated area, and surrounded by a continuous barrier at least 36 inches high at its lowest point with a controlled point of ingress and egress; and

(2) not be on public property or on a public right-of-way, without the express written approval of the appropriate State, County, or local government authority.

(c) Notwithstanding the provisions of subsection (b)(1) above, a licensee may operate an outdoor cafe that is non-contiguous to the licensed premises as part of the licensed premises, if the non-contiguous outdoor cafe meets the requirements of subsection (b)(2) above and is;

(1) on the same side of the street and extends no more than a combined total of fifty (50) feet beyond the width of the store front of the licensed premises in either direction. "Store front" is defined as that part of the outer wall of any premises which is contiguous to a public sidewalk or right-of-way. If the cafe extends beyond the width of the storefront of the licensed premises, the licensee must obtain written permission to operate the extended portion of the cafe from all adjoining property owners within the extended cafe area. If the Board is notified in writing that permission is rescinded based upon a change of ownership or otherwise, the Board will suspend the extended cafe privilege until written permission is obtained. In addition, the distance between the store front of the licensed premises and the closest point of the cafe area must be no more than twenty-five (25) feet; and

(2) enclosed in a clearly delineated area, and surrounded by a continuous barrier at least 36 inches high at its lowest point with controlled point(s) of ingress and egress.

(d) When a licensed facility is located within a Town Center and the facility

has leased space in the Town Center that is non contiguous to the licensed premises and existing outdoor café; and otherwise meets the requirements of this section, the licensees may use this space as an outdoor café area for one time Town Center events held in the Town Center. A business modification form is required at least 14 days prior to the event.

5.15 Outside Advertising/Signs

Article 2B, Section 6-201(q)(2)(iv)

A restaurant or hotel holding a Class B, BWL, on-sale license is not permitted to have any signs advertising the sale of alcoholic beverages visible from the exterior of the building in which the licensed premises is located except for the display of the menu then in use by the licensee.

5.16 Closing of Licensed Establishments

Article 2B, Section 10-504, 506

(a) If a licensee closes the licensed premises for ten days or more, the licensee must inform the Board in writing immediately upon closing, giving the reason for closing, the estimated time the premises will not be operated, and the licensee's future intentions as to the use of the license.

(b) On the tenth day after a licensee has, in the opinion of the Board, ceased operations without notifying the Board that the licensed premises would be closed, or been evicted from the premises for which the license was issued, the license shall expire unless an application for approval of a transfer of the license to another location, or to another person, or, following the death of a licensee, an application for a certificate of permission to continue the business for up to 18 months, has been approved or is pending. However, in order to avoid undue

hardship, the Board may, in its discretion, postpone the expiration for an additional period not exceeding twenty (20) days.

(c) In the event that an emergency situation or other exigent circumstances relating to the public health, safety, or welfare is determined to exist at or in the vicinity of a licensed premises, in which, in the opinion of any federal, state, county, or local municipality, the continued operation of the licensed premises would pose an immediate threat to the peace, safety, or general welfare of the community, the said governmental agency, through its duly authorized representative, will be entitled to order the closure of the licensed premises for the hours remaining prior to legal closing.

5.17 Lighting

Licensees must insure that every portion of the licensed premises which is open to the public is illuminated by sufficient natural or artificial light to insure clear visibility and to allow patrons to read a menu or other printed materials.

5.18 Restroom Facilities

Every holder of an "On-Sale" license shall provide on the licensed premises adequate and sanitary restroom facilities for all patrons, and shall be in compliance with all applicable State, County, and local Department of Health Laws, Rules, and Regulations.

5.19 Washing Containers

Licensees must thoroughly wash all containers used for dispensing drinks in a manner that conforms to the regulations of the Montgomery County Department of Health.

CHAPTER 6

PROHIBITED PRACTICES

6.0 Acts Contrary to Law

A licensee, his or her agent(s) and/or employee(s) must not commit or allow the commission on the licensed premises of any act contrary to any federal, state, county or local law, statute, ordinance, rule or regulation, or of any act against the public peace, safety, health or welfare.

6.1 Sales or Service to Minors/Consumption or Possession by Minors

Article 2B, Section 12-108, 12-109

(a) A licensee, his or her agent(s) and/or employee(s) must not sell or serve any alcoholic beverage to anyone under the age of 21. A licensee, his or her agent(s) and/or employee(s) must not permit anyone under the age of 21 to consume or possess any alcoholic beverage on the licensed premises. The licensee, his or her agent(s) and/or employee(s), must determine that the person to whom the sale or service is made, or who is consuming or possessing an alcoholic beverage on the licensed premises, is at least twenty-one (21) years of age prior to the sale, service, possession, or consumption of any alcoholic beverage. The licensee is responsible for any violation of this section.

(b) Every licensee must keep on the licensed premises and make available for inspection to the Board's duly authorized agent, a book containing the signature of any person who has presented questionable identification in connection

with the purchase of alcoholic beverages and who has presented documentary proof to substantiate his or her age. The book may contain copies of the form prescribed by Article 2B, Section 12-109 of the Annotated Code of Maryland.

(c) If licensee(s) or their employee(s) are found guilty by the Board of furnishing alcoholic beverages to a minor, and if the license of the licensee(s) is not revoked, the Board, in its discretion, may require the licensee(s), or their employee(s) to take an approved alcohol awareness certification course or the Department of Liquor Control Alcohol Law Education and Regulatory Training (ALERT) within 60 days of the date of the Board resolution in which the licensee was found guilty. In the event that there is an appeal of the resolution, the course must be taken within 60 days of the date of final determination of the appeal.

(This section revised March 20, 2008.)

6.2 Sales or Service to Intoxicated Persons/Consumption or Possession by Intoxicated Persons

Article 2B, Section 12-108

(a) A licensee, his or her agent(s) and/or employee(s) must not sell or serve any alcoholic beverage to any intoxicated person, or to any person who appears to be under the influence of alcohol and/or drugs, or who is acting in a disorderly manner. A licensee, his or her agent(s) and/or employee(s) must not permit any intoxicated person, or any person who appears to be under the influence of alcohol and/or drugs, or who is acting in a disorderly manner, to consume or

possess any alcoholic beverage on the licensed premises. The licensee, his or her agent(s), and/or employee(s) must determine that the person to whom the sale or service is made, or who is consuming or possessing an alcoholic beverage on the licensed premises, is not intoxicated, under the influence of alcohol and/or drugs, or acting in a disorderly manner prior to the sale, service, possession or consumption of any alcoholic beverage.

(b) If licensee(s) or their employee(s) are found guilty by the Board of furnishing alcoholic beverages to an intoxicated person, or to a person who appears to be under the influence of alcohol and/or drugs, or who is acting in a disorderly manner, and if the license of the licensee(s) is not revoked, the Board, in its discretion, may require the licensee(s), or their employee(s) to take an approved alcohol awareness certification course within 60 days of the date of the Board resolution in which the licensee was found guilty. In the event that there is an appeal of the resolution, the course must be taken within 60 days of the date of final determination of the appeal.

6.3 Age of Employees

Article 2B, Section 12-302

(a) Only individuals eighteen (18) years or older are permitted to sell or handle alcoholic beverages.

(b) This rule will not prohibit the licensee from employing anyone under the age of eighteen (18) for any purpose except the sale or handling of alcoholic beverages. Bussing tables is not considered handling of alcoholic beverages.

6.4 Consumption, Possession, or Sale During Prohibited Hours/One-Half Hour Grace Period

Article 2B, Sections 11-304(a), (q) and 11-516

(a) No alcoholic beverages may be served, dispensed, consumed, furnished or given away by a licensee, his or her agent(s) and/or employee(s) to anyone on any part of the licensed premises during the hours prohibited by law.

(b) There is a one-half hour grace period that begins at the required time for ceasing all alcoholic beverage sales. During the one-half hour grace period, alcoholic beverages that were ordered, received and paid for before the required time for ceasing all alcoholic beverage sales may be consumed or possessed to allow patrons to finish consuming their alcoholic beverages. All alcoholic beverages must be off all tables and the bar consumption area by the end of the one-half hour grace period.

6.5 Gambling

Except when specifically authorized by law, a licensee, his or her agent(s) and/or employee(s) must not allow the licensed premises to be used for the purpose of bookmaking or gambling in any form,.

6.6 Narcotic Drugs

(a) A licensee, his or her agent(s) and/or employee(s) must not permit the licensed premises to be used for the sale, transfer, accommodation for the sale or transfer, or possession of any controlled dangerous substance as defined by the Annotated Code of Maryland.

(b) A licensee, his or her agent(s) and/or employee(s) must not use, possess, sell or allow to be used, dispensed, or sold on the licensed premises any type of illegal drugs or narcotics.

6.7 Free Food, Merchandise and Prizes

Article 2B, Section 12-106

License holders must not offer free merchandise to encourage the sale of alcoholic beverages. No alcoholic beverages may be sold or given away as prizes in connection with the playing of any claw, pinball, slot machine, or other similar devices such as punch cards, etc., provided, however, that all persons holding “on-sale” licenses may offer any of the following free of charge in connection with the consumption of alcoholic beverages on the premises such as: pretzels, potato chips, peanuts, cheese, crackers, hors d'oeuvres.

6.8 Alcoholic Beverage Containers - Refilling/Tampering

Article 2B, Section 12-113

(a) A licensee, his or her agent(s) and/or employee(s) must not re-use or refill any bottle or other container of alcoholic beverages.

(b) A licensee, his or her agent(s) and/or employee(s) must not tamper with the contents of any bottle or container of alcoholic beverages, by, for example, adulterating, diluting, fortifying or in any other way changing the contents of the container in any manner.

6.9 Storage

Article 2B, Sections 1-201, 12-105, 12-107, 12-216, 15-204(b)

(a) License holders must not sell, store, or keep any alcoholic beverages on the licensed premises other than those purchased from the Montgomery County Department of Liquor Control.

(b) It is unlawful for any licensee to store or keep any alcoholic beverages on the licensed premises other than those permitted under the licensee's license.

(c) A licensee may only store alcoholic beverages on the licensed premises, or at a public or government controlled warehouse for which a permit has been issued under the provisions of Article 2B of the Annotated Code of Maryland.

6.10 Limits on Licensed Premises

A licensee, his or her agent(s) and/or employee(s) must not permit alcoholic beverages to be sold, served, or consumed on any part of the premises that is not specifically licensed for such uses by the Board.

6.11 Illegal Consumption

(a) Except in the case of a permanent Class C consumption license issued by this Board, it is unlawful for any person to consume on the licensed premises of any licensee any alcoholic beverages not purchased from the licensee on the said premises. It is also unlawful for any licensee to permit any person to consume any alcoholic beverage not purchased from the licensee on the premises covered by the license and not permitted by the law to be consumed on the premises.

Article 2B, Section 12-107(b)

(b) A Class A, off-sale licensee, his or her agent(s) and/or employee(s) must not permit any person to consume or open any alcoholic beverage on the licensed premises.

6.12 Open Containers

(a) A licensee, his or her agent(s) and/or employee(s) must not permit any person(s) to leave the licensed premises with an alcoholic beverage in an open container.

(b) A licensee may permit a patron who has purchased a meal and a bottle of wine and who has partially consumed the bottle of wine with the meal, to leave the licensed premises with the partially consumed bottle of wine, if the bottle has been corked or capped by the licensee or an employee of the licensee.

Article 2B, Section 12-107.1

6.13 Solicitations

(a) A licensee, his or her agent(s) and/or employee(s) is not permitted to employ any solicitor or salesman for the purposes of soliciting orders for the sale of alcoholic beverages outside of the licensed premises.

(b) A licensee, his or her agent(s) and/or employee(s) is not permitted to employ or use any loud speaker or any other sound making or amplifying device that projects sound outside the licensed premises for the purpose of soliciting orders for the sale of alcoholic beverages.

6.14 Dancing

Dancing is not permitted within licensed premises unless:

- (a) the licensee obtains an “Enterprise License” where required;
- (b) the licensee keeps available for patrons all of the tables and seats required for the licensee to meet the definition of a restaurant.

6.15 Nudity and Sexual Displays

(a) Sexual Practices and Nude Dancing

(1) A licensee, a licensee's agent(s) and employee(s) must not permit or allow the licensed premises to be used for any sexual activity prohibited by the Criminal Law Article and Article 2B of the Annotated Code of Maryland. A licensee, a licensee's agent(s) and employee(s) must not permit or allow any employee, patron, or other person present in the licensed premises to solicit any person for the purposes of prostitution, lewdness, or other acts prohibited by the Criminal Law Article of the Annotated Code of Maryland.

(2) A licensee, a licensee's agent(s) and employee(s) must not permit or allow any person to appear in any act or other performance who is nude or is in any clothing exposing to view the female breast below the top of the areola or any portion of the pubic hair, anus, buttocks or genitals. This provision shall not apply to actors and actresses performing on a stage at a theater, including a dinner theater.

(3) A licensee, a licensee's agent(s) and employee(s) must not knowingly permit or allow the premises to be used for the conduct, exhibition, or performance of any act which simulates or depicts any sexual acts prohibited by Article 2B, Section 10-405 of the Annotated Code of Maryland.

(4) A licensee, a licensee's agent(s) and employee(s) must not permit any patron of the licensed establishment to place any money or gratuity on or in the costume or clothing of, or on or about the person of any performer, entertainer.

(b) Attire and Conduct of Employees

A licensee must not employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises who is nude or is in any clothing exposing to view the female breast below the top of the areola or any portion of the pubic hair, anus, buttocks, or genitals.

(c) Exhibiting Sexually Explicit/Nude Dancing Films or Pictures

A licensee must not allow the exhibition or showing on the licensed premises of any motion picture film, still pictures, electronic reproduction or other visual reproductions that displays nude dancing or any sexually explicit performance, act, or show.

6.16 False Statement

Article 2B, Sections 10-401, 16-501

Neither an applicant for a license, nor a licensee is permitted to make any false statement, material or otherwise, in any original application for an alcoholic beverage license, renewal application, letter or written statement, in testimony before the Board or to any other representative of the Board who may be conducting an official investigation.

6.17 Discrimination

A licensee, his/her agent(s) and/or employee(s) may not directly or indirectly refuse, withdraw from, or deny to any person the services, accommodations, advantages, facilities and privileges offered on said licensee's premises on the grounds of race, creed, religion, physical or mental handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, or personal appearance, except that dress codes may be utilized where posted notice is given.

6.18 Gifts

A licensee, his/her agent(s) and/or employee(s) must not give or otherwise transfer to any member of the Board or any of its agents or employees, directly or indirectly, any commission, remuneration, or gift except as provided by the Ethics Law, Chapter 19A of the Montgomery County Code.

6.19 Noise/Disturbance of the Neighborhood

(a) All licensees must operate their establishments in such a manner that will not disturb the peace and safety of the neighborhood.

(b) Unnecessary noise emanating from the licensed premises is prohibited during hours of operation.

(c) The intent of this rule is that licensee's operations will not adversely impact the surrounding neighborhood in terms of noise and/or anti-social, illegal, boisterous and/or unsafe activities.

6.20 Disorderly House

Article 2B, Section 19-101

A licensee, his/her agent(s) and/or employee(s) must not permit any person(s) on the licensed premises to:

- (a) be intoxicated and endanger the safety of another person or property, or
- (b) be intoxicated or drink any alcoholic beverage and cause a public disturbance.

(This section revised March 15, 2007.)